IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Susan Marie METCALFE
Appl. No.: 10/587,995
§ 371 Date: July 27, 2007
For: **Method of Inducing or Modulating Immune Response**

Confirmation No.: 7016
Art Unit: 1647
Examiner: Lockard, Jon M.
Atty. Docket: 2655.0010000/RWE/GAL

Reply to Restriction Requirement

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated September 17, 2008, requesting an election of one invention to prosecute in the above-referenced patent application, Applicant hereby provisionally elects Group I, represented by pending claims 21-23. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

This election is made with traverse.

The Examiner alleges that the inventions are not linked so as to form a single general inventive concept under PCT Rule 13.1. However, Applicant asserts that to search and examine the subject matter of at least Groups I and II together would not be a serious burden on the Examiner. Group I is drawn to a method for inducing or regulating an immune response with an axotrophin polypeptide. Group II is drawn to a method for inducing or regulating an immune response with an axotrophin polynucleotide Applicant asserts that a search for methods for inducing or regulating an immune response with axotrophin would clearly provide useful information on the use of both polypeptides and

polynucleotides. Accordingly, Groups I and II are clearly linked, and it would not be an undue burden for the Examiner to search Groups I and II together. M.P.E.P. §803 (Eighth Edition, Rev. August, 2007) states:

> If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

Thus, in view of the M.P.E.P. §803, Applicant respectfully requests that at least the claims of Groups I and II be searched and examined in the subject application.

Moreover, Applicant notes that the application was considered to have unity of invention during the international phase. Since a search and examination has already been carried out during the international phase, it would place absolutely no burden on the Examiner to examine all of the present claims.

The Examiner has asserted that Groups I and II do not relate to a single general inventive concept as Group I "comprises the first recited method, a method for inducing or regulating an immune response with an axotrophin polypeptide . . . Group II invention is drawn to a method for inducing or regulating an immune response with an axotrophin polynucleotide." Office Action at page 3, lines 8-11. During the international phase, both groups were searched and, thus, were considered to have a single general inventive concept.

Moreover, there is clearly a technical relationship between the axotrophin polypeptide and polynucleotide which requires that they relate to a single general inventive concept. As disclosed on page 12, lines 13-16, it is disclosed that cells genetically engineered to contain a polynucleotide encoding axotrophin can be used to

deliver the functional material. Thus, Groups I and II share the same general inventive concept and must be examined together in the present application.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

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